

## **REMARKS/ARGUMENTS**

Claims 1-32, 45 and 47-58 remain in the application. Claims 33-44 and 59-63 are hereby withdrawn in response to a restriction requirement with traverse. Claim 46 has been canceled without prejudice. Claims 1-32 and 45-58 were rejected in the final Office Action mailed September 12, 2008 (hereinafter referred to as "Office Action"). Applicant respectfully submits that no other fees are due at this time and no new matter has been added by the forgoing amendments. In view of the following remarks and amendments, applicant respectfully requests a timely Notice of Allowance be issued in this case.

### ***Traverse of Restriction Requirement***

Claims 33-44 and 59-63 have been withdrawn in response to the restriction requirement with traverse. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. § 1.141. In addition, applicant reserves the right to present claims 33-44 and 59-63 in a divisional application.

### ***Claim Rejections under 35 U.S.C. § 103***

Claims 1-3, 6-18, 21-32, 45 and 47-58 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,319,122 to Packes, Jr. et al. (hereinafter referred to as "Packes") in view of U.S. Patent Application Publication No. 2004/0063494 to Oram et al. (hereinafter referred to as "Oram"). In addition, claims 4-5, 19-20 and 46 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Packes in view of U.S. Patent No. 6,980,962 to Arganbright et al. (hereinafter referred to as "Arganbright"). Applicant respectfully submits that claims 1-32, 45 and 47-58 are not obvious over the cited art and are, therefore, allowable under 35 U.S.C. § 103(a) for the reasons stated below.

### ***Claims 1, 18, 32 and 45***

Applicant respectfully submits that the payout in Packes is based on the **winnings of a variable number of other players** and **a variable time period** (i.e., the length of the active player's gaming session):

"An electronic amusement device and method is disclosed for rewarding a player of a game **based on the activity of other players.**" (Abstract, lines 1-3);

**“By determining the bonus payout based on the results of subsequent gaming sessions, casino operators can encourage slot players to increase the average duration of their sessions.”** (col. 3, lines 32-36);

**“In one embodiment, a player initiating a first gaming session is rewarded when a player from a subsequently initiated gaming session wins a jackpot of a predetermined amount. In an alternate embodiment, the player initiating a first gaming session receives a bonus which is a small fraction of the total amount of money wagered by all of those gaming session begun after his session. In both of these embodiments, the player forfeits an opportunity to receive bonus payouts when he ends his gaming session.”** (col. 3, lines 58-67);

**“Bonus payout field 206 represents additional bonus payouts earned by the player based on the performance of subsequent gaming sessions of other players.: (col. 5, lines 65-67); and**

**“In much the same way, the present invention encourages players to continue a given gaming session in that the longer the session continues, the more likely it is that other subsequent gaming sessions will be initiated. In one embodiment, each jackpot won by a player of a subsequent gaming session results in a bonus monetary payout for the first player, as described more fully below.”** (col. 9, line 59-col. 10, line 6).

In contrast, the payout in claims 1, 18, 23 and 45 is based on the sales price paid by other users and is not based on the play of any user:

**distributes the sales price** accepted from the current user to a specified number of previous users and an operator of the system in accordance with **a payout formula, which is not based on a play of any user.**

As a result, applicant respectfully submits that the Packes bonus system and method does not disclose, teach or suggest the system and method recited in claims 1, 18, 23 and 45.

In addition, the account in Packes is not purchased by the user for the sales price. Instead, the account in Packes appears to be part of a loyalty program, frequently players club or rewards program (col. 6, lines 52-col. 7, line 7). There is no sales price in Packes.

Furthermore, applicant respectfully submits that modifying Packes to (a) assign a multi-level wagering account having a play value to the current user in exchange for the sales price, (b) distributes the sales price accepted from the current user to a specified number of previous users and an operator of the system in accordance with a payout formula by increasing the play value of one or more multi-level wagering accounts of the specified previous users, and (c) increase the play value of the multi-level wagering

account of the current user based on the sales price accepted from a specified number of subsequent users in accordance with the payout formula would change the principle of operation of Packes. Moreover, such modifications would not satisfy the goals of Packes to increase the duration of the player's gaming sessions (col. 2, lines 17-19, 29-31) because the payouts recited in claims 1, 18 and 32 are based on the sales price and a specified number of purchasers. MPEP Section 2143.01 (VI) states "[i]f the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious." As a result, applicant respectfully submits that it would not be obvious to one skilled in the art to change Packes to incorporate the elements recited in claims 1, 18, 23 and 45.

Finally, applicant respectfully submits that Oram and Arganbright, either alone or in combination, do not cure all of the deficiencies of Packes stated above.

For all the reasons previously discussed, applicant respectfully submits that claims 1, 18, 23 and 45 are, therefore, allowable under 35 U.S.C. § 103(a). Accordingly, applicant respectfully requests that the rejection of claims 1, 18, 23 and 45 be withdrawn.

***Claims 2-17, 19-31 and 47-58***

Applicant respectfully submits that claims 2-17, 19-31 and 47-58 ultimately depend from claims 1, 18 and 45, which are allowable for the reasons stated above, and further distinguish over the cited references. Claims 2-17, 19-31 and 47-58 are, therefore, allowable under 35 U.S.C. § 103(a). Accordingly, applicant respectfully requests that the rejection of claims 2-17, 19-31 and 47-58 be withdrawn.

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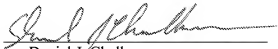
***Conclusion***

For the reasons set forth above, applicant respectfully requests reconsideration by the examiner and withdrawal of the rejections. Applicant submits that claims 1-32, 45 and 47-58 are fully patentable. Applicant respectfully requests that a timely Notice of Allowance be issued in this case. If the examiner has any questions or comments, or if further clarification is required, it is requested that the examiner contact the undersigned at the telephone number listed below.

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Respectfully submitted,

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